STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Draft

Date Amended:	**5/17/07**	Bill No:	**AB 843**
Tax:	**Property**	Author:	**Eng**
Related Bills:		Position	**Support, Board-sponsored**

BILL SUMMARY

This Board-sponsored bill:

- Removes the specific detail of the preliminary change of ownership report from statute and instead authorizes the Board to prescribe the form after consultation with the California Assessors' Association. *§480.4*
- Increases the maximum penalty cap from $2,500 to $10,000 for failure to file a change in ownership statement after a written request has been made for any property (other than a property eligible for the homeowners' exemption, which continues to be subject to the maximum penalty of $2,500) with an assessed value exceeding $2.5 million. *§480 and §482*
- Extends from 45 to 60 day the number of days to respond to a written request to file a change in ownership statement. *§480 and §482*

Summary of Amendments

The amendments since the previous analysis specify the addresses to which the change in ownership statement is to be mailed, increase the number of days to respond, restore language related to the penalty cap where the failure to file is not willful, and delete a provision that the Preliminary Change in Ownership Report to be filed under the penalty of perjury.

ANALYSIS

CURRENT LAW

Change in Ownership. Under existing property tax law, real property is reassessed to its current fair market value only when there is a "change in ownership." (Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60-69.5)

Change in Ownership Statement. Revenue and Taxation Code Section 480 requires that whenever there is a change in ownership of real property, the property owner must file a "Change in Ownership Statement" (COS). However, there is no penalty for failing to file the statement unless the assessor prompts the property owner to file the statement by making a written request. If requested, then the taxpayer has 45 days to file the COS or otherwise incur penalties as specified.

Penalty Only After Written Request. Generally, the penalty for failing to timely file a COS after a written request is 10 percent of the taxes applicable to the new base year value reflecting the change in ownership, but not to exceed $2,500 provided the failure to file the statement is not willful. Thus, at the basic 1 percent tax rate, the maximum penalty threshold of $2,500 applies to any property with a new base year value in excess of $2.5 million. If a failure to file the statement is deemed "willful" then no penalty cap applies and the penalty is 10% of the property's new base year value. In the event that a written request is made, but in fact no change in ownership occurred, the penalty for failure to respond to the assessor is $100.

In actual practice, many persons file a "Preliminary Change in Ownership Report" (PCOR) rather than a "Change in Ownership Statement." The two forms are nearly identical. And, as noted below, if a PCOR is filed at the time a deed is recorded, an extra fee of $20 is avoided. The COS and/or PCOR provide the assessor with information necessary to value the property for tax purposes, such as details about the purchase price and the terms of the sale. It also assists in determining whether the transfer of property might be eligible for one of the many change in ownership exclusions that would avoid the need to reassess the property. Both the COS and the PCOR are confidential documents pursuant to Section 481.

Although not specifically provided in statute, when a property owner files a PCOR, this form will typically satisfy the COS reporting requirement of Section 480, provided the information on the PCOR is complete. Thus, in many cases, when a PCOR is filed concurrently with the recording of a deed, the assessor will not subsequently make a request for a COS under Section 480. However, Section 480.3(d) provides that the authority to obtain information under this provision is in addition to, and not in lieu of, any existing authority the assessor has under Article 3.5 "Change in Ownership Reporting."

Preliminary Change in Ownership Report. Section 480.3 requires the transferee of real property to complete and file a PCOR when any document effecting a change in ownership, such as a grant deed, is submitted to the county recorder for recordation. If a PCOR is not concurrently filed, the document may still be recorded, but an additional recording fee of $20 is charged.

Section 480.4 provides that the PCOR will be substantially in a particular form, as detailed, and provides that the Board may revise the form as necessary for purposes of maintaining statewide uniformity.

If a taxpayer does not file a PCOR, or files an incomplete PCOR, the assessor may subsequently request that the taxpayer file a COS pursuant to Section 480.

Penalty Abatement. Section 483(a) provides that the board of supervisors may abate the penalty if the assessee (1) establishes to the satisfaction of the board of supervisors that the failure to file the change in ownership statement within the time required by Section 482(a) was due to reasonable cause and not due to willful neglect, and (2) has filed the statement with the assessor, provided the assessee has filed with the board of supervisors written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

County Optional - Automatic Abatement. Section 483(b) provides that the penalty can be abated if the assessee files the change in ownership statement no later than 60 days after the date an assessee is notified of the penalty.

Addresses. Currently the law is silent as to the address a change in ownership statement is to be mailed. With respect to any penalty that may be ultimately levied because of failure to respond to a written request, Section 482(f) provides that the penalty notice may be mailed to his or her address as indicated in any recorded instrument or at any address reasonable known to the assessor.

PROPOSED LAW

Change in Ownership Statement. This bill would amend Section 480 to increase the maximum penalty cap from $2,500 to $10,000 for not filing a COS after a written request is made under Section 480, except for properties eligible for the homeowners' exemption, which continue to be subject to a maximum penalty cap of $2,500. In practical application, this would increase the penalty amount on any property with a new base year value in excess of $2.5 million. In addition, it would increase the number of days to respond after a written request from 45 to 60 days.

Preliminary Change in Ownership Report. This bill would amend Section 480.4 to delete the specific content of the PCOR from the statute and instead provide that the Board prescribe the form, after consultation with the California Assessors' Association, consistent with the provisions for most other Board-prescribed forms.

Addresses. This bill would amend Section 482(f) to delete the provision that the penalty notice may be mailed to *any* address reasonably known to the assessor and instead provides that the notice is to be mailed to one of three addresses: (1) the address provided in the recorded instrument or document, (2) the address specified for mailing tax information on the preliminary change in ownership report, or (3) at “the” address as contained in the official records of the assessor.

BACKGROUND

Property Tax System. California's system of property taxation under Article XIII A of the California Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2 percent, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value."

Board Prescribed Forms. Government Code Section 15606, subdivision (d), provides that the Board of Equalization shall:

> “Prescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment.”

In addition to Government Code Section 15606, the Legislature has enacted numerous statutes mandating forms for use in particular property tax programs and has specified that the Board shall prescribe the content of the forms after consultation with interested parties. Both the forms prescribed pursuant to Section 15606 and the forms prescribed pursuant to specific statutes are referred to as Board-prescribed forms. Each year, Board staff reviews and approves all Board-prescribed forms that each county will use in the following year.

Guide to Change in Ownership Reporting Statutes

Revenue & Taxation Code Section	**Subject** *Click on link to view sample forms*
480	Change In Ownership Statement (COS)
480.1	BOE Change In Ownership Statement - Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP): • Change In Control under §64(d)
480.2	BOE Change In Ownership Statement – Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP) • Change In Ownership under §64(c)
480.3	Preliminary Change in Ownership Report (PCOR)
480.4	Preliminary Change in Ownership Report – Detail of Form
481	COS and PCOR – Confidentiality
482	Failure to File Penalties (§§480, 480.1, and 480.2)
483	Failure to File Penalties – Penalty Abatement

COMMENTS

1. **Sponsor and Purpose.** The Board of Equalization is sponsoring this bill so that modifications and improvements to the PCOR can be made without the necessity of seeking legislation. In addition, increasing the penalty cap is intended to adjust the amount of penalty to reflect inflation changes since the penalty was first established more than 25 years ago. Indexing the penalty cap forward to reflect inflation is intended to provide a meaningful incentive for property owners to respond to an assessors' written request to file the statement. Assessors have had some difficulty obtaining information from property owners that is necessary to process changes in ownership, causing assessors to expend their limited resources in tracking down the necessary information.

2. **Key Amendments.** The April 17 amendments address concerns raised by interested parties. The amendments:

   - Delete a provision included in the bill as introduced to provide that the PCOR be signed under the penalty of perjury. Instead, the amendments restore language included in the detail of the form as currently provided in statute. Specifically, the form states that the PCOR is to be signed with a certification that the information provided is "true, correct, and complete" to the best of the property owner's knowledge. This amendment was made to address an issue raised by the California Chamber of Commerce. The association did not believe that the veracity of the information provided on the PCOR should be subject to the penalty of perjury.

   - Increase the number of days to file a COS after a written request from 45 to 60 days. This amendment was made to give property owners additional time to comply, given the increase in the penalty. It was also made in recognition that in larger corporate entities with multiple departments, additional time may be needed to direct the form to the correct person in the company.

- Specify the addresses that may be used in mailing a change in ownership statement, as previously the law was silent. Taxpayers expressed concern that government officials might mail the statements to old or incorrect addresses in order to benefit from potential penalties. It should be noted that generally, grant deeds indicate the address to which tax information is to be mailed. Thus, the grant deed itself specifies the address to which an assessor would send important tax information including tax bills. In addition, the PCOR form provides a line where the new property owner may specify the mailing address to be used for tax purposes. Furthermore, at any time, a taxpayer may update the mailing address to which tax documents are to be sent by filing a written request with the local assessor.
- Restore language deleted from the bill as introduced that provides that the penalty cap does not apply when the failure to file the COS is willful.

3. **The Penalty Cap of $2,500 has not been increased in 26 Years.** The cap has remained unchanged since its implementation in 1981. This bill updates the amount of the penalty to reflect changes in inflation so that the effective amount of the penalty is equivalent in current dollars.
4. **Because the current $2500 maximum penalty has been effectively discounted to $700 due to inflation, it is insignificant in relationship to the property taxes that would be due on the property if the change in ownership is discovered. Therefore, the penalty no longer serves as an effective incentive to comply with the reporting requirements.** The $2,500 penalty has been effectively discounted to $700, as $2,500 in today's dollars equates to about $700 in 1981 dollars.
5. **The increased penalty only applies to properties worth more than $2.5 million and homeowners are protected from any impact.** In practical application, this bill only applies to properties with an assessed value of more than $2.5 million and homeowners are excluded from any increased penalty regardless of the home's value. The rationale for excluding homes is that fewer public resources must be expended to determine the fair market value of a residence without the financial details, such as the purchase price, that the COS would have provided. Homes are the least complicated type of property to appraise for tax purposes. Assessing officials will generally have many comparable sales upon which they can make a reasonable estimate. Thus, the workload impact to the taxing agency to properly assess a home is significantly less than it would be for a unique property, such as a commercial property, where there are fewer, if any, comparable sales of property of a similar type, use, and size in the immediate vicinity.
6. **The penalty only applies after a formal written request has been made and ignored.** Existing law requires property to be reappraised at its current full market value whenever it changes ownership, and when such a change occurs, the law requires the owner to report the change in ownership to the assessor by filing a COS. However, the law *does not* impose a penalty for failure to file the COS **unless and until the assessor makes a written request** and the owner subsequently fails to file the COS within 45 days. The 45 day period (which this bill would increase to

60 days) runs from the date the written request is made, not the actual date of the change in ownership. It can take months and sometimes years, in the case where a deed was not recorded, for the assessor to uncover an unreported change in ownership and thus mail the COS. When the COS is not filed, assessors must spend a significant amount of additional time and resources pursuing the information necessary to properly revalue the property.

7. **Change in ownership statements help avoid unnecessary administrative costs to appraise a property that will subsequently be reversed once the taxpayer responds because of the resulting increased taxes.** Many documents that are recorded are ultimately not reassessable events. COSs and PCORs help determine if the transfer is eligible for any one of the many exclusions available. The change in ownership statements asks specific questions about transfers that would not cause the property to be reassessed. For example, a deed may be recorded to merely remove a person from title that only held a security interest.

8. **Three strikes before any penalty would ever be levied upon a taxpayer.** Property owners have three opportunities to file the necessary information with the local assessor. Additionally, the law requires that information be provided when a deed is presented for recordation with the recorders office.

   - **A PCOR should be filed concurrently when the deed is recorded**. In fact, for transactions in which title and escrow companies are involved in the real property sale, as part of the customer service provided by these companies, the PCOR is filled out for the property owner, which the new owner signs during the closing process and filed when the company presents deed for recordation.
   - **No penalty would ever apply if a person properly notifies the assessor, as required by law, that he or she has purchased the property.** As noted above, the law requires that new buyers of property inform the assessor's office within 45 days of a change in ownership that they have acquired the property by filing a COS. There is no penalty for not filing the statement within 45 days.
   - **A taxpayer that has both failed to file a PCOR and failed to file a COS within 45 days of the actual date of purchase may return the COS that is mailed to it by the assessor within 45 days of the date written request and no penalty will apply.** The date of the written request could be a year or more later than the sale and the taxpayer could file a form at anytime before that.

9. **This bill does not apply to change in ownership statements sent by the Board of Equalization to legal entities.** The Board's Legal Entity Ownership Program (LEOP) sends legal entities change in ownership statements under different sections of law (See 480.1 and 480.2). These statements are called "Statement of Change in Control and Ownership of Legal Entities." With respect to these statements, there is no penalty cap for failure to timely file the statement with the Board of Equalization after a written request. Instead, the penalty is a flat 10% of the assessed value (See Section 482(b)). Furthermore, the 10% penalty applies whether or not it is ultimately determined that a change in ownership did not occur. I

10. **Taking the PCOR form out of Statute.** The form would be more timely and it would be more cost effective to allow the Board to prescribe the details of the form as changes are needed to reflect new laws and make user-friendly improvements to

meet the needs of assessors, taxpayers, and the Board. In a recent Board survey on change in ownership issues facing assessors, a variety of improvements to make the PCOR more user-friendly were suggested. Keeping the form in statute makes these changes difficult to implement because both the PCOR and the COS should request the same information for consistency.

Furthermore, while the COS is prescribed by the Board, its specific form is not detailed in statute (See Section 480(c)). In addition, the Board prescribes many forms for use for property tax purposes.

11. **Property owners can avoid these penalties by voluntarily filing a PCOR.** The PCOR is filed at the time the deed for change in ownership is recorded. This "preliminary" report generally satisfies the requirement for filing the COS, as it requests identical information to that requested on the COS. This is the most cost effective method for all parties: it saves property owners the extra recording surcharge of $20 and it saves government the need to pursue property owners for the necessary information. As a part of the escrow process, as a customer service, the PCOR is routinely filled out for the property owner, which the new owner signs during closing. Thus, filing a PCOR saves taxpayers and assessors money. For taxpayers, filing the PCOR avoids the extra recording surcharge of $20 when the transfer document, typically a deed, is presented to the county recorder office for recordation. When a PCOR is not concurrently filed, then the assessor must mail a COS and the failure to return the COS within the prescribed time period puts the taxpayer at risk of penalties.

12. **Prior Legislation.** This bill is similar to last year's AB 926 (Chu) which the Governor vetoed. In the veto message, the Governor noted that an increase in the penalty is reasonable but that he was concerned that more work needed to be done to ensure that the statements are appropriately delivered and received by the property owner prior to levying any penalty for failure to respond. To that end, this bill gives property owners 15 more days to file a change in ownership statement in those cases where the statements needs to be internally re-directed and specifies the appropriate addresses to be used to mail the statements.

COST ESTIMATE

This bill would not result in any additional costs.

REVENUE ESTIMATE

This bill has no direct revenue impact. However, it is possible that more penalty monies would be collected, for a limited class of properties, but only after a failure to timely respond.

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	06/11/07
Contact:	Margaret S. Shedd	916-322-2376	

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